IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Salia Issa, Fiston Rukengeza, and Salia Issa and Fiston Rukengeza as next friends of their unborn child, Plaintiffs, v. Texas Department of Criminal Justice, Lt. Brandy Hooper, individually, Lt. Desmond Thompson, individually, and Assist. Warden Alonzo Hammond, individually, Defendants.	)	CIVIL ACTION NO: 1:22-cv-1107-LY

PLAINTIFFS' SURREPLY IN RESPONSE TO DEFENDANTS' REPLIES

Through counsel, Cronauer Law, LLP, Plaintiffs hereby file a surreply in response to Defendants' replies (Doc. #28 and #29). In support thereof, Plaintiffs state as follows.

1. In their replies, Defendants argue Plaintiffs pivoted their theory on Count 1 after Defendants filed their pending motions to dismiss. Specifically, Defendant-TDCJ argues:

> But while Plaintiffs' Response still uses the label "disparate treatment, sex," it briefs the claim as though it were "disparate treatment, pregnancy." *See* Dkt. #24 at 8. The distinction changes the elements of the claim. Is the alleged disparate treatment between Issa and "similarly-situated men experiencing the same adverse employment action"? Or is alleged disparate treatment between Issa and "similarly-situated non-pregnant employees seeking the same accommodation"?
>
> Assuming Plaintiffs' response pivot from sex to pregnancy is permitted, the Court should still dismiss the pregnancy-based disparate treatment claim for reasons raised in TDCJ's motion to dismiss. …

Doc. #28, pp. 3-4 (footnotes omitted). *See also* Doc. #29, p. 3.

2. Thus, Defendants essentially are arguing that Plaintiff-Issa should have brought a claim alleging Title VII discrimination for "pregnancy" discrimination instead of "sex" discrimination.
3. Pregnancy is not a protected category listed in Title VII. *See* 42 U.S.C. § 2000e-2(a)(1). Instead, Title VII makes clear that pregnancy falls under the umbrella of sex. 42 U.S.C. § 2000e(k). Thus, there is no such thing as a claim alleging "disparate treatment, pregnancy" under Title VII. Such claims are sex discrimination claims.
4. A claim for disparate treatment based on sex which relies on pregnancy is governed by *Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338 (2015), as Plaintiffs already briefed. Plaintiffs theory on Count 1 has not changed whatsoever through the pleadings. Indeed, Count 1 has stayed essentially the same and, as Plaintiffs have argued, it correctly pleads a claim as recognized by *Young v. United Parcel Service, Inc. Compare* Doc. #4, ¶ ¶ 45-49 *with* Doc. #18, ¶ ¶ 58-63.
5. If Defendants were uncertain as to why Plaintiff-Issa alleged Count 1 the way she did, they were free to ask Plaintiffs' counsel. Further, they could have moved for a more definite statement. *See* Fed. R. Civ. P. 12(e). Instead, they jumped to a dispositive motion and briefed a claim that was not alleged. Plaintiffs' theory on Count 1 has not pivoted. Count 1 has been and remains adequately alleged.

WHEREFORE, for the reasons briefed presently and previously, Plaintiffs request that Defendants' pending motions to dismiss be denied.

Respectfully submitted,

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